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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.J., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.G.,

Defendant and Appellant.

E071413

(Super.Ct.No. J266698)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G.
Pace, Judge. Affirmed.

Michelle D. Pena, under appointment by the Court of Appeal, for Defendant and
Appellant.

Michelle D. Blakemore, County Counsel, Pamela J. Walls, Special Counsel, for
Plaintiff and Respondent.

Defendant and appellant, C.G. (mother), is the mother of B.J. (the child). Mother appeals from a juvenile court's order suspending her visits and delegating authority to the San Bernardino County Children and Family Services (CFS) to decide when she can resume visits. We affirm.

PROCEDURAL BACKGROUND

On August 9, 2016, CFS filed a Welfare and Institutions Code¹ section 300 petition on behalf of the child, who was five years old at the time. The petition alleged that the child came within the provisions of subdivision (b) (failure to protect). It included the allegations that mother overdosed on methamphetamine and marijuana and was found unconscious at her home while caring for the child, that she had a substance abuse problem, and that she failed to take her prescription medication.

On August 10, 2016, the juvenile court detained the child from mother's care. The matter was continued to August 15, 2016, for further detention. On August 15, 2016, the child was placed in the home of her father (father).² The court ordered supervised visitation between mother and the child to be once a week for two hours.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² The child's father is not a party to this appeal.

Jurisdiction/Disposition and Subsequent Reports

The social worker filed a jurisdiction/disposition report on August 31, 2016,³ and recommended that the court declare the child a dependent of the court and provide mother with reunification services. She interviewed mother on August 26, 2016, and reported that mother did not feel that her drug use interfered with her parenting skills. Mother said she used methamphetamine from ages 17 to 23 every other day, but denied any current methamphetamine use. (She was 28 at the time the petition was filed.) She admitted relapsing from May 2016 until August 2016, but said she had not used since. Mother had been prescribed four different medications for multiple sclerosis, and she had a medical marijuana card. The social worker opined that it was the child's best interest to remain living with her father.

On September 2, 2016, CFS filed a first amended section 300 petition on behalf of the child, alleging that she came within the provisions of section 300, subdivision (b) (failure to protect). This petition contained allegations against father only.

The court held a jurisdiction/disposition hearing on September 6, 2016, and the court continued the matter and referred the case to mediation.

On October 17, 2016, the social worker filed a second amended section 300 petition, which contained the same allegations against mother as the first petition, plus an allegation regarding father's history of substance abuse.

³ The report included information on the child's four siblings. However, those siblings are not subjects of this appeal and, thus, will not be discussed in this opinion.

The matter went to mediation on October 18, 2016. Mother agreed to submit on the allegations that she had a substance abuse problem that impacted her ability to care for the child, and she failed to take her medication as prescribed to stabilize her health. Mother agreed to participate in reunification services, including counseling, parenting, substance abuse treatment, testing, a 12-step program, and domestic violence treatment. The parties also agreed that the child would be placed with father, and mother would have supervised visits once a week.

On October 18, 2016, the court held a pretrial settlement conference and found that the child came within section 300, subdivisions (b) and (g), declared the child a dependent, placed her with father, ordered mother to participate in services, and ordered visitation once a week for two hours. It authorized the social worker to liberalize visitation as to frequency and duration when deemed appropriate.⁴

On February 16, 2017, the social worker filed a section 387 supplemental petition and report, stating that father had failed to seek appropriate mental health and education services for his children. The social worker recommended removing the child from his custody. The court followed the recommendation, and the child was detained in foster care.

Six-month Status Review

The social worker filed a six-month status review report on September 5, 2017, recommending that mother's reunification services be continued. She reported that

⁴ The court vacated the detention hearing.

mother lacked the focus and motivation to fully address her issues, and she had not been successful in her services. As to visitation, the social worker reported that mother consistently visited, and the visits went well.

The court held a hearing on September 11, 2017, and adopted the social worker's recommendations and continued services. The court ordered supervised visitation to be once a month for two hours, and authorized the social worker to liberalize visitation as to frequency and duration.

Section 388 Petition

On January 11, 2018, mother filed a section 388 petition, requesting the court to grant unsupervised visits and overnight and weekend visits. She alleged that she was continuing to drug test and had previously participated in parenting and counseling services. The court gave the social worker the authority to start unsupervised visits "by information packet" and overnight and weekend visits "by approval packet."

Twelve-month Status Review

On February 20, 2018, the social worker filed a 12-month status review report recommending that mother's services be terminated. Mother had not completed outpatient substance abuse services, despite starting several programs. Furthermore, she did not appear to have stable income or housing, and she continued to lack the motivation and focus to complete services. The social worker did note that mother was consistent with her visitation, and the visits were going well.

The court held a contested 12-month review hearing on March 19, 2018, and continued the child as a dependent. The court continued mother's services and ordered

her to participate. It ordered supervised visitation once a week for two hours and gave CFS the authority to liberalize the frequency and duration.

Suspension of Mother's Visitation

On July 31, 2018, the court suspended mother's visitation, pending the 18-month review hearing. The court found visitation to be detrimental because mother had become increasingly volatile. Her behavior began escalating on July 18, 2018, during a meeting with two social workers when they discussed why the recommendation would be for adoption. Mother began yelling and cursing at the social workers, and they ended the meeting early.

On July 25, 2018, mother had a supervised visit at Burger King with her five children. When a social worker brought two of them an hour after the other three arrived, mother became irate. She yelled at the social worker in front of the children. She told the children to put their shoes on and said they were leaving. When the social worker told two of the children to come with her, mother lunged to grab one of them by the arm. Mother yelled and cursed at the social worker, who then stepped away and told mother the visit was over. Mother refused to allow the children to go with the social worker. The social worker called the police, who arrived shortly. The child was crying when the officer was present and cried uncontrollably on the way back to the CFS office. While at the CFS office, mother refused to allow the child and her two siblings go with their caregivers, stating that she wanted to continue visiting with them. The social worker reported that mother "barricaded" them by not letting them to go with their foster parents, and the children looked "worried and frightened."

18-month Status Review

The social worker filed an 18-month status review report on August 9, 2018, recommending that the court terminate reunification services and order the permanent plan of a permanent planned living arrangement. Mother had made no progress on her case plan during that reporting period. The social worker recommended that the court find a compelling reason existed for determining that a section 366.26 hearing was not in the child's best interest, and the goal for her permanent plan was legal guardianship with her current caregivers.

On August 15, 2018, the court set the matter for contest on behalf of mother. Pending the contest, the court found mother's visits to be detrimental based on her behavior, and it gave CFS the authority to resume visits if they became appropriate.

The court held a contested hearing on September 21, 2018. Mother's counsel asked the court to consider alternatives to suspending visitation, such as shortening them or having visits at a more secure location. Counsel for the child asked that the visits be suspended, noting that one of the children had to be taken to the hospital based on the previous incident with mother. Counsel, however, stated that if the social worker believed mother was changing, then she submitted on CFS's authority for visits to resume, or for visits in a therapeutic setting. County counsel argued that visits were emotionally detrimental to the child, and there were safety concerns present, despite CFS supervision. County counsel noted that, in the prior incident, the police had to be called in order for the social worker to obtain the child from mother.

The court terminated mother's reunification services and suspended her visits "with authority to resume when appropriate, including in a therapeutic setting." It added that it had the same concerns as county counsel and counsel for the child, with respect to the visits. The court found a compelling reason existed for determining that a section 366.26 hearing was not in the child's best interest, and it found the permanent plan of legal guardianship with her current caregivers was appropriate. The court continued the matter to January 22, 2019, for an appearance review and March 21, 2019, for a permanency planning review.

Mother filed a timely notice of appeal regarding the order suspending visitation.

ANALYSIS

I. The Court Did Not Delegate Its Authority to CFS

Mother argues the court impermissibly delegated its authority to decide whether visits could occur when it ordered her visits suspended and gave CFS the authority to resume visits when appropriate. We disagree.

The juvenile court has the sole power to determine whether visitation will occur, and it may not delegate that power. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009 (*Christopher H.*)) "This does not mean the juvenile court must specify all the details of visitation. The statutory scheme contemplates that the probation department (§ 280) or the county welfare department (§ 272) has discretion in recommending and implementing visitation ordered by the court." (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373-1374 (*Moriah T.*)) "[T]he juvenile court may delegate to the probation officer or social worker the responsibility to manage the details of visitation, including

time, place and manner thereof.” (*Id.* at p. 1374.) The ministerial tasks of overseeing visits “can, and should, be delegated to the entity best able to perform them, here the department of social services. Such matters as time, place and manner of visitation do not affect the defined right of a parent to see his or her child and thus do not infringe upon the judicial function.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) “Only when a visitation order delegates to the probation office or county welfare department the absolute discretion to determine whether any visitation occurs does the order violate the statutory scheme and separation of powers doctrine.” (*Moriah T.*, at p. 1374.)

Here, the question is whether the juvenile court gave CFS the complete discretion to decide whether any visitation should occur. It did not. When the court declared the child a dependent, it ordered supervised visitation to be once a week for two hours, and authorized the social worker to liberalize the frequency and duration “when deemed appropriate.” Thus, the court exercised its judicial authority in determining that mother had a right to visit the child regularly. (*Moriah T.*, *supra*, 23 Cal.App.4th at p. 1374.)

Subsequently, at the 18-month review hearing, the court terminated mother’s services and continued the matter for an appearance review and a subsequent permanency planning review. At that time, the court found visits to be detrimental, ordered visitation to be suspended, and authorized CFS to “resume [visitation] when appropriate, including in a therapeutic setting.” Thus, the record shows the court did not delegate the decision whether visitation could occur, as mother claims; rather, it delegated to CFS the responsibility to manage the details of visitation, including the time, place and manner. (*Moriah T.*, *supra*, 23 Cal.App.4th at pp. 1374-1375; see *In re Danielle W.* (1989) 207

Cal.App.3d 1227, 1233 (*Danielle W.*) [court’s order stating “ ‘visitation will be at DCS’s discretion and the children’s discretion’ ” did not represent an improper delegation of power, but simply authorized DCS to administer the details of visitation].) In other words, “[h]aving exercised its judicial authority in determining that [mother] had a right to visit the [child] regularly, the juvenile court delegated to [CFS] the responsibility to ‘arrange for, and monitor visitation’ which would be ‘consistent with the well-being of the [child]’ [citation], and ‘at the discretion of [CFS] as to the time, place and manner.’” (*Moriah T.*, at pp. 1374-1375.) Since the court did not vest CFS with absolute discretion to determine *whether* visitation should occur, but *when* visitation would be appropriate again, the order did not violate the statutory scheme and separation of powers doctrine, as mother claims. (See *Id.* at p. 1374.)

In her reply brief, mother contends that the court’s order is similar to that in *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1477, where the appellate court concluded there was an improper delegation of judicial power. However, the order in that case differs significantly from the order here. In that case, the order stated that the father had “ ‘no visitation rights without permission of minors’ therapists.’ ” (*Id.* at p. 1477.) The court there found that the order conditioned visitation “on the children’s therapists’ sole discretion” and that “the therapists, not the court, [had] unlimited discretion to decide whether visitation [was] appropriate.” (*Ibid.*) In contrast, the court here ordered visitation for mother, but subsequently *suspended* it, upon finding visitation detrimental to the child. Mother’s issue is with the suspension order.

Accordingly, we find that the visitation order does not represent an improper delegation of judicial power.

II. The Court Properly Suspended Mother's Visits With the Child

Mother argues there was insufficient evidence that the visits were detrimental to the child, or harmful to her well-being. She contends there were no concerns about the child's physical well-being or emotional health at the visits. She further avers that the court did not consider any alternatives to suspending visitation, such as ordering visits in a therapeutic setting, or specifying that she could visit after a certain number of counseling sessions. Mother requests this court to reinstate visits with instructions "as to how to address the court's concerns." We conclude that the court properly suspended mother's visits.

The court suspended mother's visitation on July 31, 2018, because she had become "increasingly volatile" in her interactions with CFS. The court continued the suspension of visitation, following the termination of her reunification services at the 18-month review hearing, which is governed by section 366.22.⁵ (*In re D.B.* (2013) 217 Cal.App.4th 1080, 1090 (*D.B.*)). Section 366.22, subdivision (a)(3), provides that when a court terminates services and orders a section 366.26 hearing, "the court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child." The statute does not specify a standard of proof for the

⁵ The court here did not hold a section 366.26 hearing, but apparently followed the social worker's recommendation to find that legal guardianship was the appropriate permanent plan, at the 18-month review hearing.

determination of detriment. (*In re Manolito L.* (2001) 90 Cal.App.4th 753, 760 (*Manolito*)).) However, courts have concluded the Legislature intended that the juvenile court should apply the preponderance of the evidence standard to adjudicate whether visitation would be detrimental. (*Id.* at pp. 761-762.) While visitation is an essential part of a reunification plan, it “is not integral to the overall plan when the parent is not participating in the reunification efforts.” (*In re J.N.* (2006) 138 Cal.App.4th 450, 458-459.) During the postreunification period, the focus is on permanency and stability for the child. (*D.B., supra*, 217 Cal.App.4th at p. 1090.)

We review a visitation order in a dependency proceeding for abuse of discretion, and we uphold it if substantial evidence supports it. (See *In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) We do not reweigh evidence or render an independent judgment on it. (See *In re Laura F.* (1983) 33 Cal.3d 826, 833.) The record here contains sufficient evidence to support the court’s suspension of mother’s visitation. Her behavior began escalating on July 18, 2018, during a meeting with social workers. She began yelling and cursing at them, and they had to end the meeting early. Approximately two months later, mother had a supervised visit at Burger King with her five children. When a social worker brought two of them an hour after the other three arrived, mother became irate and yelled at the social worker in front of the children. She told the children they were leaving, and when the social worker told two of the children to come with her, mother lunged to grab one of them by the arm. She again yelled and cursed at the social worker, who then told her the visit was over. Mother refused to allow the children to go with the social worker, and the social worker had to call the police for assistance. The

child was clearly upset after witnessing mother's behavior, as she started crying at Burger King and cried uncontrollably on the way back to the CFS office. At the CFS office, mother "barricaded" the child and refused to let her go home with her foster parents, stating that she wanted to continue the visit. Her behavior apparently caused the child to be "worried and frightened." In view of the evidence of mother's physically aggressive and hostile behavior, the court could readily conclude that visitation was detrimental to the child. Mother's conduct of yelling and cursing at the social worker, lunging at one of her children to try and prevent the social worker from taking her, and barricading the child so she could not return to her foster home was clearly cause for concern.

Mother argues that a court may suspend visits when continuing them would be harmful to a child's well-being and claims that the term "well-being" in this context should only include visits involving threats of physical harm, not emotional harm. She relies upon *In re C.C.* (2009) 172 Cal.App.4th 1481, 1491. However, that case concerned the standard set forth in section 362.1, which provides for visitation when reunification services have been ordered and were still being provided. (*C.C.*, at p. 1491.) In any event, detriment includes harm to the child's emotional well-being. (*Christopher H.*, *supra*, 50 Cal.App.4th at p. 1008 ["The court may deny a parent visitation only if visitation would be harmful to the child's emotional well-being."].)

Mother further complains that the court did not consider any alternatives to suspending visitation, such as ordering that she could visit the child after participating in a certain number of counseling sessions, or after submitting to a drug test, or ordering visits to resume in a therapeutic setting. However, as discussed *ante*, the court properly

authorized CFS to determine when and how visits should be resumed. (See *ante*, § I; see also, *Moriah T.*, *supra*, 23 Cal.App.4th at pp. 1374-1375; *Danielle W.*, *supra*, 207 Cal.App.3d at p. 1233.)

We note that the court did not deny visitation, but merely suspended it. Moreover, the court found the permanent plan of legal guardianship with the child's current caregivers appropriate, and, as such, it may continue to have jurisdiction over the child. (*In re K.D.* (2004) 124 Cal.App.4th 1013, 1019.) Mother could always file a section 388 petition for the court to reconsider its visitation order, if circumstances changed. (§ 388; *Guardianship of Kaylee J.* (1997) 55 Cal.App.4th 1425, 1431.) Additionally, we observe that the court continued the matter to January 22, 2019, for an appearance review and March 21, 2019, for a permanency planning review. Thus, circumstances may have already changed.

We conclude that no abuse of discretion appears in the court's suspension of mother's visitation.

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.